



BOARD OF COMMISSIONERS

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macombcountymi.gov/boardofcommissioners

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

TUESDAY, DECEMBER 2, 2008

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Adoption of Agenda
4. Approval of Minutes Dated 09-09-08 (previously distributed)
5. Public Participation
6. Authorize the Board Chair to Enter into Agreement with the Six Rivers Regional Land Conservancy for the Establishment of a Conservation Easement (mailed)
7. Grant the Name of the Conservation Easement to be "James B. & Ann V. Nicholson Nature Center and Floodplain Conservation Easement" (mailed & attached)
8. Planning and Economic Development Department Executive Director's Report (mailed)
9. New Business
10. Public Participation
11. Adjournment

MEMBERS: Vosburg-Chair, Mijac-Vice Chair, Camphous-Peterson, DeSaele, Duzyj, DiMaria, Drolet, Brdak, Rengert, Brown, Haggerty, Roberts, Gielegem and Crouchman (ex-officio)

MACOMB COUNTY BOARD OF COMMISSIONERS

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Kathy D. Vosburg - District 25
Leon Drolet - District 26

RESOLUTION NO. _____ FULL BOARD MEETING DATE:
AGENDA ITEM:

MACOMB COUNTY, MICHIGAN

RESOLUTION TO: Recommend that the Board of Commissioners authorize the Board Chair to enter into agreement with the Six Rivers Regional Land Conservancy, subject to a private philanthropic contribution of \$150,000, for the establishment of a conservation easement.

INTRODUCED BY: Kathy Vosburg, Chair, Planning & Economic Development Committee

DESCRIPTION:

Attachments

COMMITTEE/MEETING DATE

PED 12-2-08

CONSERVATION EASEMENT

DATE: November 5, 2008

OWNER: Macomb County, 1 South Main, 9th Floor, Mt. Clemens, MI 48043

CONSERVANCY: Six Rivers Regional Land Conservancy, a Michigan non-profit corporation, formerly known as Oakland Land Conservancy, P.O. Box 80902, Rochester, MI 48308

PROPERTY: 33.88 acres of land described on attached Exhibit A ("Property")

CONVEYANCE: The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is set forth in this agreement. This conveyance is a gift from the Owner to the Conservancy. Accordingly, this is exempt from Transfer Tax pursuant to MCL 207.505(a) and 207.526(a).

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

1. PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE CONSERVANCY.

- A. This Conservation Easement (i) preserves the Property for outdoor recreation by, or the education of, the general public, (ii) protects the Property's natural resources and watershed values, maintains and enhances biodiversity, retains quality habitat for native plants and animals, and maintains and enhances the natural features of the property, and (iii) preserves open space (a) for the scenic enjoyment of the general public, and (b) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit (collectively, the "Purposes").
- B. The Owner of the Property is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes of this Easement and the preservation of the Conservation Values. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.
- C. The Conservancy is a qualified holder of this Conservation Easement and is committed to preserving the Conservation Values of the Property and upholding the terms of this Conservation Easement. The Conservancy is a tax-exempt, nonprofit Michigan corporation qualified under Internal Revenue Code Sections

501(c)(3) and 170(h)(3) and 170(h)(4)(ii) and (iii); and under the Conservation and Historic Preservation Easement, Sub Part 11 of Part 21 of Natural Resources and Environmental Protection Act, MCL §§ 324.2140 et seq. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Conservancy also preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

2. **CONSERVATION VALUES.** The Property possesses natural, scenic, open space, biological, and ecological values of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Easement. The Conservation Values include the following:

- A. The Property provides open space for the scenic enjoyment of the general public through:
- 1) A scenic landscape and natural character which would be impaired by modification of the Property.
 - 2) A scenic panorama visible to the public from Elizabeth Road and Dunham Road, and from publicly accessible sites, such as the Macomb County Department of Public Works, which would be adversely affected by modifications of the natural habitat.
 - 3) Relief from urban closeness.
 - 4) Biological integrity of other land in the vicinity has been modified by intense urbanization, and the trend is expected to continue.
 - 5) There is a reasonable possibility that the Conservancy may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.
 - 6) The Property is located within Clinton Township, a suburban community, located 20 miles northeast of Detroit, Michigan.
- B. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy:
- 1) The State of Michigan has recognized the importance of protecting our natural resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction."
 - 2) Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq*; (Legislative Findings § 324.35502);

- 3) Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);
- 4) Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka "Section 404" Clean Water Act.);
- 5) Shorelands Protection and Management, Part 323 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32301 *et seq.*;
- 6) Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;
- 7) Great Lakes Submerged Lands, Part 325 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32501 *et seq.*;
- 8) Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);
- 9) The County of Macomb recognizes the importance of the Property as an ecological and scenic resource through its natural resource and green infrastructure mapping, in which Michigan Natural Features Inventory identified the Property as a high priority potential natural area and as the largest natural area in Macomb County located south of M-59.
- 10) The County of Macomb has designated this area as a type of natural area, having riparian connections and/or access to waterways, which is a priority for conservation, in its Macomb County Recreation and Open Space Master Plan 2007-2012.
- 11) The Macomb County Trailways Master Plan (November 2004, with 2008 map update) designates the Property as a potential link in the County trail network.
- 12) The Property is within the Clinton River North Branch for which a EPA 319 subwatershed management plan is under development (Michigan Department of Environmental Quality Tracking Code No. 2008-0011).
- 13) The Clinton River watershed, located primarily in Macomb and Oakland Counties, was designated an Area of Concern (AOC) by the Great Lakes Water Quality Agreement in 1985. Subsequently the Clinton River Watershed Remedial Action Plan (RAP) Update (2008) identifies the single greatest source of water quality problems as storm water runoff.
- 14) The Township of Clinton has designated this area as a floodway in its Master Plan for Future Land Use, March 1989, which references FEMA – DFIRM 2006 update.

C. The Property contains significant natural habitat in which fish, wildlife, plants or the ecosystems which support them, thrive in a natural state, as demonstrated by:

- 1) The Property provides vital corridor wetlands and upland wildlife habitats which serve as a connection for wildlife movement and create a natural "greenway" along the Clinton River North Branch floodplain.

- 2) The Property is noteworthy for the presence of several very large oak trees along the river near the northeastern corner of the property, including a 51" DBH red oak (*Quercus rubra*) and 43" DBH white oak (*Quercus alba*).
- 3) Wetlands, as described in Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Code MCL 324.30301 et seq., identified as important natural resources for the people of the State of Michigan, are present on the Property.
- 4) The Property contains sustainable habitat for biodiverse vegetation, birds, fish, amphibians and terrestrial animals.
- 5) The Property is characteristic of Southern Floodplain Forest in the low-lying areas next to the river. Its dominant vegetation is red ash (*Fraxinus pennsylvanica*), sycamore (*Planatanus occidentalis*) and cottonwood (*Populus deltoides*), interspersed with ponded areas dominated by red maple (*Acer rubrum*), and low terraces dominated by beech (*Fagus grandifolia*) and sugar maple (*Acer saccharum*). These plant communities are in a relatively natural and undisturbed condition and provide important habitat for neotropical migrant birds and breeding bird species. The seasonal ponds found in the floodplain also provide habitat for reptiles and amphibians.
- 6) Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs, including snags in the floodplain, which provide roosts and nurseries for bats.
- 7) The Property provides important natural land within the subwatershed of the Clinton River North Branch. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the Clinton River and Lake St. Clair watersheds.
- 8) The Property includes 5,156 linear feet of frontage on the Clinton River North Branch.
- 9) The Property and its access from Macomb County public buildings provides opportunities to provide natural resource education to the public.
- 10) Preservation of the Property enables the Owner to integrate the Conservation Values with other neighboring lands.

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory attached to this Conservation Easement as Exhibit B. This "Baseline Documentation Report", which is incorporated herein by reference, consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that the Baseline Documentation Report is an accurate representation of the Property at the time of this donation. The Conservancy may use the Baseline Documentation Report in enforcing the provisions of this Conservation Easement but is not limited to the use of the Baseline Documentation Report to show a change in conditions.

4. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property which is inconsistent with the Purposes of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:
- A. **Division.** Any division or subdivision of the Property is prohibited.
 - B. **Commercial Activities.** Any commercial activity on the Property is prohibited.
 - C. **Industrial Activities.** Any industrial activity on the Property is prohibited.
 - D. **Construction.** Except as permitted in Section 5, below, the placement or construction of any human-made modifications, including structures, buildings, fences, roads, and parking lots is prohibited.
 - E. **Cutting Vegetation.** Any cutting or removal of trees or vegetation, living or dead, including pruning or trimming, is prohibited, except to (i) remove hazardous or dead trees for reasons of safety, (ii) to protect existing or authorized roads, fences, foot trails and paths, and (iii) as specified in Section 5 below. Management methods to control invasive species and enhance ecological values, such as cutting of vegetation or prescribed burning shall be detailed in the Management Plan as provided in Section 5 below.
 - F. **Land Surface Alteration.** Any mining or alteration of the surface of the land is prohibited, including any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products are all prohibited activities.
 - G. **Dumping.** Processing, storage, dumping, or disposal of liquid, solid, natural or man-made waste, refuse, or debris on the Property is prohibited.
 - H. **Water Courses, Ground Water.** Natural water courses, lakes, wetlands, or other bodies of water may not be altered and water from ground or surface sources may not be diverted.
 - I. **Vehicles.** Motorized vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated on the Property except as provided in Section 5 E
 - J. **Livestock.** Raising or housing of livestock, poultry or horses, commercial kenneling of animals and commercial aquaculture is prohibited on the Property.
 - K. **Signs and Billboards.** Billboards are prohibited. Signs are prohibited, except for the signs indicated below. Such signs shall be sited, designed, and constructed so

as not to interfere with the Conservation Values of the Property. The following signs may be displayed to state:

- (a) The name and address of the Property or the Owner's name.
- (b) Nature Center hours, including hours of operation and details about restrictions on use by Nature Center visitors.
- (c) Interpretive Signage for use by Nature Center visitors. Interpretive signage must not interfere with the Conservation Values of the Property. Owner shall provide a written plan to the Conservancy for the Conservancy's review and approval. Such approval shall not be unreasonably withheld.
- (d) The area is protected by a conservation easement.
- (e) Prohibition of any unauthorized entry or use.
- (f) An advertisement for the sale or rent of the Property.
- (g) Signs as permitted in section 6.E below.

5. **PERMITTED USES.** The Owner retains all ownership rights which are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:

- A. **Right to Manage Property for Passive Recreation.** The Owner retains the right to allow hiking, cross-country skiing, fishing, controlled deer hunting, environmental education and wildlife observation (the "Passive Recreational Uses"). Notwithstanding the foregoing, the Passive Recreational Uses are permitted only as they are consistent with the Purposes and Conservation Values. Additional uses need to be approved by the Conservancy as provided in Section 5.C. below.
- B. **Right to Convey.** The Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.
- C. **Right to Add Designated Structures, Improvements, Modifications, and Uses.** The Owner retains the right to add the structures, improvements, modifications, and uses depicted and described in the James B. Nicholson Nature Center and Concept Plan (Concept Plan), provided such uses are consistent with the Purposes and Conservation Values. The Concept Plan has been provided by the Owner and is attached as Exhibit C. The Concept Plan depicts and locates the following structures, improvements, modifications and uses: an outdoor classroom, water sampling deck, two pedestrian bridges, a system of unpaved pedestrian trails, signage, sitting areas and a restroom. Prior to beginning construction of any structures, improvements, modifications, or uses that have been indicated on the Concept Plan, the Owner will submit a Final Site Plan, which includes detailed construction drawings and location envelopes, to the Conservancy for approval by the Conservancy according to the procedures established in Section 8, below. Owner shall be responsible for obtaining any additional permits required for construction. With respect to other structures, improvements, modifications, or uses on the Property that are not inconsistent with and do not impair the

Conservation Values, Owner retains the right to add same, but only if a request is first submitted to and approved by the Conservancy according to the procedures established in Section 9, below. Structures, improvements, modifications and uses may include: trails, boardwalks and observation platforms, seating areas, structures to support ecological interpretation and study (such as deer exclosures and bird nesting boxes).

- D. **Property Management Plan.** The Owner and Conservancy have agreed to mutually develop a written Management Plan for the Property. The Management Plan shall detail how the Property shall be managed and used in keeping with the Conservation Values and Purposes of this Conservation Agreement. The Owner agrees to manage the Property in accordance with the Management Plan.

The Management Plan shall be consistent with the terms of this Conservation Easement and shall be approved by the Owner and the Conservancy. The Management Plan may be amended if approved in writing by both parties.

The Management Plan will encourage long-term sustainable stewardship conducive to the propagation and retention of healthy native plants and trees and wild populations of game and non-game species of birds and mammals, which could include the cutting of invasive vegetation.

In the event that the Owner fails to implement management activities set forth in the Management Plan, and such failure continues for a period of thirty days after written notice to the Owner, the Conservancy and the Owner shall meet to discuss and confer as to the reasons, if any, for such failure by the Owner, and attempt to agree upon a plan and schedule for such implementation and/or agree upon any necessary modification to the Management Plan. If no agreement can be reached, or if the Owner refuses or fails to meet, the Conservancy, without further notice shall have the right, but not obligation, to implement such management activities at its expense, so long as management activities do not interfere with the Owner's use of the property. The Remedies provided in Section 7 shall not apply in connection with enforcement of this subsection 5.D.

- E. **Limited Vehicular Use.** The Owner, including Owner's officials, employees and agents, may operate a motor vehicle or other necessary equipment on the property in conducting forestry management or other management practices in accordance with an approved management plan or as necessary in any corrective or recovery action whether in an emergency or not, as permitted in this Conservation Easement.

6. **RIGHTS OF THE CONSERVANCY.** The Owner confers the following rights upon the Conservancy to perpetually maintain the Conservation Values of the Property:

- A. **Right to Enter.** The Conservancy has the right to enter the Property at

reasonable times to monitor the Property and to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. Notwithstanding the foregoing, the Conservancy may not unreasonably interfere with the Owner's use and quiet enjoyment of the Property or permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.

- B. **Right to Preserve.** The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values of the Property.
- C. **Right to Require Restoration.** The Conservancy has the right to require the Owner to restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
- D. **Right of Enforcement against Trespass.** In the event the terms of this Conservation Easement are violated by the acts of trespassers or other third parties, the Owner may, at the Owner's option, join in any suit, to assign its right of action to the Conservancy, or appoint the Conservancy its attorney-in-fact, for the purposes of pursuing enforcement action against the responsible parties. Notwithstanding anything in this section to the contrary, this section shall not limit the Conservancy's ability to bring any action, whether in law or equity, against the Owner for any violation of the Conservation Easement by Owner.
- E. **Signs.** The Conservancy has the right to place signs on the Property which identify the land as protected by this Conservation Easement. The number and location of any signs are subject to the Owner's approval.

7. **CONSERVANCY'S REMEDIES.** This section addresses cumulative remedies of the Conservancy and limitations on these remedies.

- A. **Forbearance or Delay in Enforcement.** A delay in enforcement or forbearance by the Conservancy to exercise its rights under this Conservation Easement in the event of any breach of any provision of this Conservation Easement by Owner shall not be deemed or construed to be a waiver by the Conservancy of such provision, or of any subsequent breach of the same or other provision of this Conservation Easement, or of any of the Conservancy's rights under this Conservation Easement.
- B. **Acts Beyond Owner's Control.** The Conservancy may not bring an action against the Owner for modifications to the Property resulting from causes beyond the Owner's control, including unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or an Owner's well-intentioned actions in response to an emergency resulting in changes to the Property. The Owner has no responsibility under this

Conservation Easement for such unintended modifications, but the Conservancy may bring an action against a third-party for modifications that impair the Conservation Values.

- C. **Notice and Demand.** If the Conservancy determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property. If at any time the Conservancy determines, at its sole discretion, that the violation constitutes immediate and irreparable harm, no written notice is required and the Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property. If the Conservancy determines that this Conservation Easement is, or is expected to be, violated, and the Conservancy's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs associated with this effort.
- D. **Failure to Act.** If, within 30 days after written notice, the Owner does not implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, as determined in the sole discretion of the Conservancy, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 30-day period.

The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If a court of competent jurisdiction determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Conservancy for all reasonable costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Conservancy.

- E. **Actual or Threatened Non-Compliance.** The Conservancy's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Conservation Easement shall not require proof of actual damages to the Conservation Values.

- F. **Cumulative Remedies.** The preceding remedies of the Conservancy are cumulative. The Conservancy may invoke any, or all, of the remedies if there is an actual or threatened violation of this Conservation Easement.
8. **NO TRANSFER OF DEVELOPMENT RIGHTS.** Owner hereby grants to Conservancy all development rights, except for the particular development rights specifically reserved herein, for the limited purpose of ensuring that such rights are forever terminated and extinguished and may not be used on or transferred off of the Property to any other property, adjacent or otherwise, or used as a credit for density development anywhere, by Owner, Conservancy, or any other party.
9. **NOTIFICATION PROVISION.** The Conservancy is entitled to sixty (60) days written notice whenever its approval is required under this Conservation Easement. The Conservancy may obtain an additional thirty (30) day period to provide its approval by notifying the Owner of its intent to extend the time within the original sixty (60) day period. If the Conservancy fails to respond with an approval or denial of the request within the sixty (60) or ninety (90) day period, as applicable, after it receives the written request, then its approval shall be deemed given. This implied approval shall not extend to any activity contrary to this Conservation Easement or impairing a Conservation Value. The Conservancy's approval shall continue for twenty four (24) months. If the approved activity is not completed within twenty four (24) months after the approval date, then the Owner must re-submit the written request to the Conservancy.
10. **SUBORDINATION.** Any mortgage, lien, claim or interest in the Property arising after the date of recording this Agreement shall be subject and subordinate to the terms of this Agreement. Owner represents and warrants that as of the date of execution and recording of this Agreement, the Property is not subject to any mortgage, lien, claim or interest which has not been subordinated to this Agreement.
11. **CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**
- A. This Conservation Easement is created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.

- C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.

12. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Conservancy shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property. The Conservancy's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Conservancy, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property.

A. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. The Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and all such applicable federal, state, and local laws, regulations, and requirements.

B. The Conservancy, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property, except to the extent any such injury, death or property damage is caused by the Conservancy, its members, trustees or directors, officers, employees, or agents. To the extent allowed by the law, the Owner agrees to indemnify, defend and hold harmless the Conservancy, its members, trustees or directors, officers, employees, agents, successors and assigns from and against all liabilities, penalties, fines, charges, costs losses, damages, expenses, causes of actions, claims, demands, orders, judgments, or administrative actions, including attorneys fees, arising during the term of the Owner's ownership of the Property.

13. **HAZARDOUS MATERIALS.** The Owner represents and warrants that after reasonable investigation, the Owner has no knowledge of a release of hazardous substances or hazardous wastes on the Property. The Owner agrees to protect and defend the Conservancy against any claims of hazardous material contamination on the Property; including the violation of any local, state or federal law, statute, regulation or ordinance or any administrative order.

A. The Owner represents and warrants that to the best of its knowledge, no substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or

across the Property.

- B. The Owner represents and warrants that to the best of its knowledge, there are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and that no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state and local laws, regulations and requirements.
 - C. The Owner represents and warrants that the Owner and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.
 - D. The Owner represents and warrants that there is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
 - E. The Owner represents and warrants that no civil or criminal proceedings or investigations have been instigated at any time or are now pending and no notices, demands or orders have been received arising out of any violation or alleged violation of, or failure to comply with any federal, state, or local law, regulation or requirement applicable to the Property or its use, nor did there exist any facts or circumstances that the Owner might reasonably expect to form the basis of any such proceedings, investigations, notices, claims, demands or orders.
 - F. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement, as hazardous, toxic, pollutant, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Owner agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Conservancy, in which case the Conservancy shall be responsible for the same.
14. **CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Conservancy's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
15. **TERMINATION.** This Conservation Easement may be extinguished only by an

unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.

- A. **Unexpected Change in Conditions.** If subsequent circumstances render the Purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to compensation in accordance with the provisions of Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii).
 - B. **Eminent Domain.** If the Property is taken, in whole or in part, by power of eminent domain, the Conservation Easement over the effected portion of the Property will cease. The Conservation Easement will remain in full force and effect for the remainder, if any, of the Property.
16. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act MCL 324.2140 *et seq.*
17. **NOTICES.** For purposes of this agreement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class Certified Mail, Return Receipt Requested.
18. **SEVERABILITY.** If any portion of this Conservation Easement, or the application thereof to any person or circumstance, is determined to be invalid by a court of competent jurisdiction, the remaining provisions will remain in force.
19. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of the Owner and the Conservancy and their personal representatives, heirs, successors in interest, and assigns and shall continue as a servitude running in perpetuity with the Property. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Owner.
20. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
21. **RECORDATION.** The Conservancy shall record this instrument in a timely fashion in

the official records of Macomb County, Michigan, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement

22. **MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.
23. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings relating to the Conservation Easement, which are merged herein. No alteration or modification of this Conservation Easement shall be valid or binding unless contained in an amendment that complies with Section 24.
24. **AMENDMENT.** If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, the Owner and the Conservancy are free to jointly amend this Conservation Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of the Conservancy under any applicable law, and any amendment shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment must be in writing and signed by both parties and recorded in the official records of Oakland County.
25. **SUBSEQUENT TRANSFERS.** The Owner agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Owner further agrees to give written notice to the Conservancy of the transfer of any interest at least 20 days prior to the date of such transfer. The failure of the Owner to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.
26. **NO FORFEITURE.** Nothing contained herein will result in a forfeiture or reversion of the Owner's title in any respect.
27. **EXHIBITS.** This Conservation Easement includes, and incorporates the following Exhibits:
 - A. Conservation Easement Legal Description
 - B. Baseline Documentation Report
 - C. James B. Nicholson Nature Center and Floodplain Easement Concept Site Plan

[SIGNATURES ON FOLLOWING PAGE]

TWO WITNESSES:

OWNER:

MACOMB COUNTY, MICHIGAN

Printed Name:

Name:

Title:

Printed Name:

STATE OF MICHIGAN)

)

COUNTY OF MACOMB)

Acknowledged before me on this _____ of _____, of 2008, by
_____, the _____ of Macomb County, Michigan.

_____, Notary Public
Mt. Clemens , Macomb County, Michigan
My commission expires:_____

TWO WITNESSES:

CONSERVANCY:

SIX RIVERS REGIONAL LAND
CONSERVANCY, a Michigan non-profit
corporation, formerly known as Oakland Land
Conservancy

Printed Name:

Name:
Title:

Printed Name:

STATE OF MICHIGAN)
)
COUNTY OF _____)

Acknowledged before me on this _____ of _____, of 2008,
_____, known to me to be the _____ of
the Six Rivers Regional Land Conservancy, a Michigan non-profit corporation, formerly known
as the Oakland Land Conservancy.

_____, Notary Public
_____, County, Michigan
My commission expires: _____

AFTER RECORDING SEND
TO:

Donna Folland
Executive Director
Six Rivers Regional Land
Conservancy
PO Box 80902
Rochester, Michigan 48308

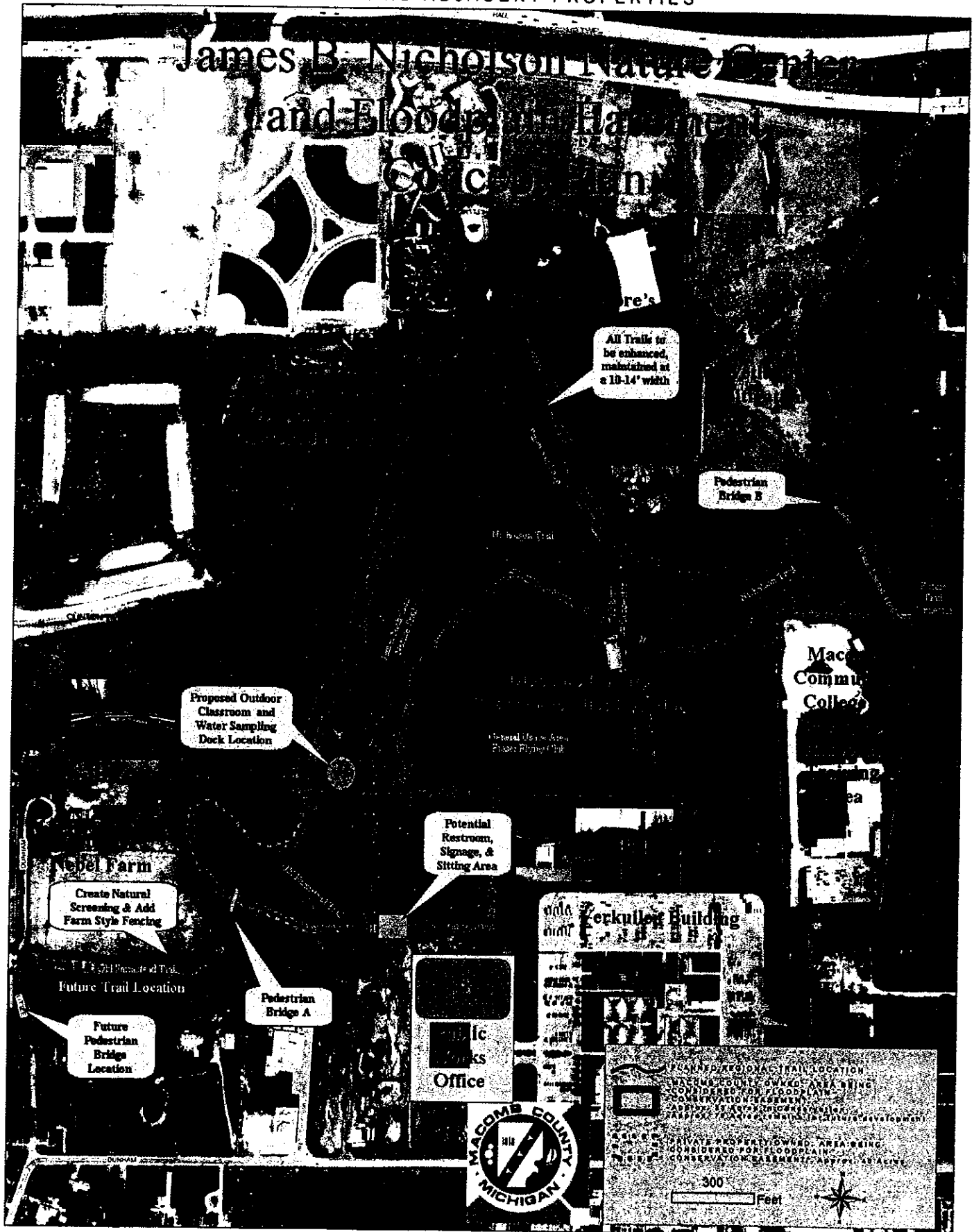
SEND TAX BILL TO:

[Insert name of Owner]

PREPARED BY:

Frank Aiello
Assistant Professor
Thomas M. Cooley Law
School
2630 Featherstone Road
Auburn Hills, Michigan 48326

CONCEPT PLAN FLOODPLAIN CONSERVATION EASEMENT
AND ADJACENT PROPERTIES



RECYCLABLE PAPER

SUBSTITUTE RESOLUTION

7.

RESOLUTION NO. _____ FULL BOARD MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO grant the name of the conservation easement to be "James B. & Ann V. Nicholson Nature Center and Floodplain Conservation Easement," subject to a philanthropic contribution of \$150,000

INTRODUCED BY: Kathy Vosburg, Chair, Planning and Economic Development Committee

COMMITTEE/MEETING DATE

PED 12-02-08

7

RESOLUTION NO. _____

FULL BOARD MEETING DATE:
AGENDA ITEM:

MACOMB COUNTY, MICHIGAN

RESOLUTION TO: Recommend that the Board of Commissioners grant the naming rights of the conservation easement to Mr. James P. Nicholson, subject to a philanthropic contribution of \$150,000.

INTRODUCED BY: Kathy Vosburg, Chair, Planning & Economic Development Committee

DESCRIPTION:

(see substitute resolution)

COMMITTEE/MEETING DATE

PED 12-2-08

RECYCLABLE PAPER

RESOLUTION NO. _____

FULL BOARD MEETING DATE:
AGENDA ITEM:

MACOMB COUNTY, MICHIGAN

RESOLUTION TO: Receive and File the departmental report from the Executive Director of Planning and Economic Development

INTRODUCED BY: Kathy Vosburg, Chair, Planning & Economic Development Committee

DESCRIPTION:

COMMITTEE/MEETING DATE

PED 12-2-08

